

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHRIS LOHM,

Defendant.

CR. NO. S-93-0224 EJG

ORDER DIRECTING UNITED STATES
ATTORNEY TO FILE RESPONSE

Defendant, a federal prisoner (serving his sentence in state custody) and proceeding pro se, has filed a motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255. In his motion defendant seeks to modify his sentence from "concurrent" with his state sentence to "coterminous" with his state sentence. In other words, defendant requests that the incarceration component of his federal sentence conclude at the same time as his state sentence. In his motion defendant explains that his state sentence is likely to conclude in September of 2008, some ten months ahead of his anticipated completion of the federal sentence.

1 In support of his request for sentence modification,
2 defendant points to the intent of the court and the parties at
3 the time of sentencing that defendant would serve his federal
4 sentence in federal custody. Had that occurred, defendant argues
5 he would have been entitled to accumulate federal good time
6 credits which would have reduced the term of his sentence.
7 However, for reasons previously examined and explained at a
8 series of status conferences held in this case during the fall of
9 2000, the intentions of the court and the parties were not
10 effectuated by the Florida Department of Corrections or the
11 Bureau of Prisons.

12 It is apparent that if the instant motion is construed as a
13 § 2255 motion, it must be dismissed as time-barred. However, the
14 court retains discretion to recharacterize the document if
15 appropriate to afford relief, if any is available. In that
16 connection, the court directs the United States Attorney to
17 respond to defendant's motion within 30 days from the filing date
18 of this order. Further proceedings, if any, will be determined
19 by the court after review of the government's response.

20 The Clerk of Court is directed to serve a copy of this order
21 on Assistant U.S. Attorney Thomas Flynn, the attorney previously
22 assigned to this case.

23 IT IS SO ORDERED.

24 Dated: January 28 , 2008

/s/ Edward J. Garcia

EDWARD J. GARCIA, JUDGE
UNITED STATES DISTRICT COURT